

HOUSE BILL NO. 247

INTRODUCED BY M. MILLER

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A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE DEFINITION OF A DEPENDENT MINOR CHILD FOR INDIVIDUAL INCOME TAX PURPOSES TO REQUIRE CERTAIN DEPENDENTS TO MEET EDUCATION OR SCHOOL ATTENDANCE REQUIREMENTS; AMENDING SECTIONS 15-30-2115, 87-2-102, AND 87-2-105, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-30-2115, MCA, is amended to read:

"15-30-2115. General definition of dependent. (1) For purposes of 15-30-2114, the term "dependent" means, subject to the provisions of subsection (2), any of the following individuals over half of whose support, for the calendar year in which the tax year of the taxpayer begins, was received from the taxpayer:

- (a) a son or daughter of the taxpayer or a descendant of either;
- (b) a stepson or stepdaughter of the taxpayer;
- (c) a brother, sister, stepbrother, or stepsister of the taxpayer;
- (d) the father or mother of the taxpayer or an ancestor of either;
- (e) a stepfather or stepmother of the taxpayer;
- (f) a son or daughter of a brother or sister of the taxpayer;
- (g) a brother or sister of the father or mother of the taxpayer;
- (h) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer;
- (i) an individual who, for the tax year of the taxpayer, has as the individual's principal place of abode the home of the taxpayer and is a member of the taxpayer's household; or
- (j) an individual who:
 - (i) is a descendant of a brother or sister of the father or mother of the taxpayer;
 - (ii) for the tax year of the taxpayer received institutional care required by reason of a physical or mental disability; and
 - (iii) before receiving the institutional care, was a member of the same household as the taxpayer.

1 (2) An individual 12 years of age or older and less than 19 years of age on the last day of the tax year
 2 is not considered a dependent for purposes of this chapter under subsection (1) unless the individual:

3 (a) was enrolled in a public school, a nonpublic school or home school provided for in 20-5-109, a
 4 general educational development program, any other program that leads to a high school diploma or its
 5 equivalent, or an apprenticeship as provided in Title 39, chapter 6, during the last 3 months of the tax year;

6 (b) held, on the last day of the tax year, a high school diploma or an equivalency of completion of
 7 secondary education as provided in 20-7-131;

8 (c) was unable to participate or complete educational activities under subsections (2)(a) or (2)(b)
 9 because of physical or mental illness; or

10 (d) qualified for an additional exemption as a child with a disability under 15-30-2116(3).

11 ~~(2)~~(3) For purposes of 15-30-2114 and this section:

12 (a) the terms "brother" and "sister" include a brother or sister by the half blood;

13 (b) in determining whether any of the relationships specified in this section exist, a legally adopted child
 14 of an individual must be treated as a child of the individual by blood."

15

16 **Section 2.** Section 87-2-102, MCA, is amended to read:

17 **"87-2-102. Resident defined.** In determining whether a person is a resident for the purpose of issuing
 18 resident hunting, fishing, and trapping licenses, the following provisions apply:

19 (1) (a) A member of the regular armed forces of the United States, a member's dependent, as defined
 20 in 15-30-2115 but without regard to 15-30-2115(2), who resides in the member's Montana household, or a
 21 member of the armed forces of a foreign government attached to the regular armed forces of the United States
 22 is considered a resident for the purposes of this chapter if:

23 (i) the member was a resident of Montana under the provisions of subsection (4) at the time the member
 24 entered the armed forces and continues to meet the residency criteria of subsections (4)(b) through (4)(e); or

25 (ii) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana
 26 for at least 30 days, and presents official assignment orders and proof of completion of a hunter safety course
 27 approved by the department, as provided in 87-2-105, or a certificate verifying the successful completion of a
 28 hunter safety course in any state or province. The 30-day residence requirement is waived in time of war.
 29 Reassignment to another state, United States territory, or country terminates Montana residency for purposes
 30 of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and

1 dependents continue to physically reside in Montana and the member continues to meet the residency criteria
2 of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a
3 "home of record" or "home of residence" in that member's armed forces records does not determine the member's
4 residency for purposes of this section.

5 (b) A member of the regular armed forces of the United States who is otherwise considered a Montana
6 resident pursuant to subsection (1)(a)(i) does not forfeit that status as a resident because the member, by virtue
7 of that membership, also possesses, has applied for, or has received resident hunting, fishing, or trapping
8 privileges in another state or country.

9 (2) A person who has physically resided in Montana as the person's principal or primary home or place
10 of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately before making
11 application for any license is eligible to receive resident hunting, fishing, and trapping licenses. As used in this
12 section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary
13 home or place of abode.

14 (3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of
15 this section by physically residing in Montana as the person's principal or primary home or place of abode for not
16 less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident
17 hunting, fishing, or trapping license.

18 (4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to
19 be considered a resident for purposes of this section:

20 (a) the person's principal or primary home or place of abode is in Montana;

21 (b) the person files Montana state income tax returns as a resident if required to file;

22 (c) the person licenses and titles in Montana as required by law any vehicles that the person owns and
23 operates in Montana;

24 (d) except as provided in subsection (1)(b), the person does not possess or apply for any resident
25 hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or
26 trapping privileges in another state or country; and

27 (e) if the person registers to vote, the person registers only in Montana.

28 (5) A student who is enrolled full-time in a postsecondary educational institution out of state and who
29 would qualify for Montana resident tuition or who otherwise meets the residence requirements of subsection (2)
30 or (3) is considered a resident for purposes of this section.

1 (6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within
2 Montana, considered a resident for the purpose of making application for a fishing license as long as the person
3 remains an enrollee in a Montana camp.

4 (7) A person who does not reside in Montana but who meets all of the following requirements is a
5 resident for purposes of obtaining hunting and fishing licenses:

6 (a) The person's principal employment is within this state and the income from this employment is the
7 principal source of the applicant's family income.

8 (b) The person is required to pay and has paid Montana income tax in a timely manner and proper
9 amount.

10 (c) The person has been employed within this state on a full-time basis for at least 12 consecutive
11 months immediately preceding each application.

12 (d) The person's state of residency has laws substantially similar to this subsection (7).

13 (8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents,
14 legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this
15 section. The minor is considered a resident for purposes of this section regardless of whether the minor resides
16 primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be
17 required to show proof of the parental, guardianship, or custodial relationship to the minor.

18 (9) A person is not considered a resident for the purposes of this section if the person:

19 (a) claims residence in any other state or country for any purpose; or

20 (b) is an absentee property owner paying property tax on property in Montana.

21 (10) A license agent is not considered a representative of the state for the purpose of determining a
22 license applicant's residence status."

23

24 **Section 3.** Section 87-2-105, MCA, is amended to read:

25 **"87-2-105. Safety instruction required.** (1) Except for a youth who qualifies for a license pursuant to
26 87-2-805(4), a hunting license may not be issued to a person who is born after January 1, 1985, unless the
27 person authorized to issue the license determines proof of completion of:

28 (a) a Montana hunter safety and education course established in subsection (4) or (6);

29 (b) a hunter safety course in any other state or province; or

30 (c) a Montana hunter safety and education course that qualifies the person for a provisional certificate

1 as provided in 87-2-126.

2 (2) A hunting license may not be issued to a member of the regular armed forces of the United States
3 or to a member of the armed forces of a foreign government attached to the armed forces of the United States
4 who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to
5 a member's dependents, as defined in 15-30-2115 but without regard to 15-30-2115(2), who reside in the
6 member's Montana household, unless the person authorized to issue the license determines proof of completion
7 of a hunter safety course approved by the department or a hunter safety course in any state or province.

8 (3) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized
9 to issue the license receives an archery license issued for a prior hunting season or determines proof of
10 completion of a bowhunter education course from the national bowhunter education foundation or any other
11 bowhunter education program approved by the department. Neither the department nor the license agent is
12 required to provide records of past archery license purchases. As part of the department's bow and arrow
13 licensing procedures, the department shall notify the public regarding bowhunter education requirements.

14 (4) The department shall provide for a hunter safety and education course that includes instruction in
15 the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one
16 of its objectives the promotion of hunter safety and education. The department may designate as an instructor
17 any person it finds to be competent to give instructions in hunter safety and education, including the handling of
18 firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from
19 Montana's hunter safety and education course to a person successfully completing the course.

20 (5) The department shall provide for a course of instruction from the national bowhunter education
21 foundation or any other bowhunter education program approved by the department and for that purpose may
22 cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling
23 of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give
24 bowhunter education instruction. A person appointed shall give the course of instruction and shall issue a
25 certificate of completion to any person successfully completing the course.

26 (6) The department may develop an adult hunter safety and education course.

27 (7) The department may adopt rules regarding how a person authorized to issue a license determines
28 proof of completion of a required course."
29

30 NEW SECTION. **Section 4. Applicability.** [This act] applies to tax years beginning after December 31,

1 2011.

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